

MINUTES
WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, May 14, 2012, 6:00 PM

A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Amanda Mosiman; Mike Moesner, Brad Overton (arrived at 7:00 pm); Marlin Weisheit, Larry Willis and Jeff Valiant.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

MEMBERS ABSENT: None

MINUTES: Upon a motion by Amanda Mosiman and seconded by Larry Willis, the Minutes of the last regular meeting held April 9, 2012, were approved as circulated.

The President explained the Rules of Procedure to the audience.

REZONING PETITION:

PC-R-12-11- Petition of Bell Meadow Apartments, LLC, by Greg Moore, Member. OWNER: The First National Bank of Carmi, by Donald W. Price, Sr. VP to rezone Lots 21-29 in the Corrected Plat of Bellmoore Landing Sec. 1 as recorded in Doc. # 2008R-005005 in the office of the Warrick County Recorder, being 13.88 acres located on the E side of Libbert Rd. & the N side of High Pointe Drive, 0' NE of the intersection formed by Libbert Rd. & High Pointe Drive, Ohio Twp. from "C-4" General Commercial to PUD consisting of "C-4" with a Use and Development Commitment and a Development Plan. *Advertised in the Boonville Standard May 3, 2012.*

Greg Moore and Jim Morley, Jr., Morley and Associates were present.

The President called for a staff report.

Mrs. Rector said they have submitted all of the return receipts from certified mail of notice of this meeting to the adjacent property owners except for Mansoor & Alifia Khan. She said they will need to bring in the return receipt or unopened letter once they receive it. She said this is a petition to rezone Lots 21-29 Bellmoore Landing Sec. 1 which consists of 13.88 acres from "C-4" General Commercial to PUD consisting of "C-4" General Commercial. She said there is no minimum lot size required for commercial development or PUD and the Comprehensive Plan projects the area to be commercial. She added the property does lie within a TIF District. Mrs. Rector explained to the Board these are vacant commercial subdivision lots and added the property to the west is vacant Agriculture; to the north is Agriculture with a residence to the east and south is "C-4" General Commercial being mostly vacant lots in Bellmoore Subdivision Sec. 1. She added there is a strip mall located on lots 4-6 and to the southeast is Wal-Mart. She further added the property all lies within a Zone A Flood Plan; the elevations have been determined and range between 389.6 to 390.5. She said certified plot plans will need to be submitted and each

building must be constructed 2 feet above the base flood elevation ten feet around each structure unless they receive a Letter of Map Amendment prior to construction. She stated that each lot has frontage on High Pointe Drive but they are showing one main entrance for the apartment complex. She said the stated use on the application is apartments with accessory structures which are allowed in the proposed zoning. She said they have submitted a Use and Development Commitment limiting the use on the property to apartments with accessory structures and they have a Development Plan showing the layout of the nine apartment buildings with 26 units in each building for a total of 234 units along with a clubhouse and a pool and playground as well as a rendering of the style of building they are considering. She said some of the proposed buildings are shown within the 25 building setback line of the recorded subdivision and they will have to replat these lots and submit a new primary plat for the PUD. She added the Development Plan says the perimeter treatment will be a combination of fencing and landscaping and says all parking areas shall be paved and all lawn areas shall be grassed. She added the County Surveyor submitted a letter saying the site has sufficient drainage capacity and they do not require an additional drainage plan since the site is part of the Bellmoore Landing Subdivision and was included in the original drainage plan for the subdivision. She said the application is in order.

Jim Morley, Jr. said if they remember a couple of months ago they were here with a project that looks similar to this project. He said this is the same building design on hopefully a less controversial location. He said this project is intended to be a high end apartment complex and on the second page of the development plan they can see a rendering by Entasis Design of North Carolina who is the architects that have been hired to do the building design for the site. He said the intent is that this would be the highest end or most upscale apartment complex in the Newburgh and Southern Indiana area. He said the intent is to make a really nice facility and they feel that by locating here in Bellmoore Landing will help provide a customer base for the buildings that are in the subdivision already and for the buildings to come. He said they have a capacity letter from Chandler Water and a capacity letter from Newburgh Sewer and they think this is a good fit for the area. He said they are also working with the bank to clear out any restrictions to allow this project to go through.

Mrs. Rector explained to the new Board members that this is just a Development Plan and they will have to come back with a primary plat. She said that will also include entrance, street and drainage plans if so required. She said they will also have to meet all subdivision regulations.

Mike Moesner asked if they will be one, two and three bedroom apartments.

Mr. Morley said there is a mix of each of those. He said on the second page of the plan it shows the floor plan of the buildings and it shows the layouts of the apartments. He said the buildings also have a garage on the first floor so they will be the only apartments in this area that he is aware of in which you can park in your garage and not get wet between parking and your apartment. He said the desire is for this to be a high end complex.

Guy Gentry asked if the garages are across the back.

Mr. Morley said back or front; it depends on the way you walk in.

Amanda Mosiman asked how many units will be in this complex.

Mr. Morley said 26 units per building and nine buildings for a total of 234 units. He said this should be a real nice project and it will bring a lot of construction jobs along with it and some nice housing at a time when some folks are moving toward rental with the uncertainty of the economy.

Larry Willis asked if every apartment has a garage and if not how many will.

Mr. Morley said no; there are nine garages per building so there will be 81 garages. He said not everyone will want a garage. He said obviously this will greatly increase the assessed property value of that property and increase the tax rolls.

Ascertaining there were no other comments from the Board and being no remonstrators present, the President called for a motion.

Mike Moesner made a motion to recommend approval to the County Commissioners of PC-R-12-11 from "C-4" General Commercial to PUD consisting of "C-4" General Commercial. The motion was seconded by Jeff Valiant. Larry Willis abstained from voting and all other members voted in favor of the motion.

The petitioners were informed this will be forwarded to the County Commissioners with a recommendation of approval on Monday, June 11, 2012 at 4:00 p.m. in the Commissioners Meeting Room, Courthouse, Boonville, Indiana.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-12-04 – Kirby Broadview Farms Estates Subdivision by Kirby Broadview Farms, Inc., James Kirby, Pres. 10.28 acres located on the S side of Millersburg Rd. approximately 500' E of the intersection formed by Millersburg Rd. (N 100) & Eskew Rd. (W 300), Boon Twp. *Complete legal on file. Advertised in the Boonville Standard May 3, 2012.*

The President said this item has a request to continue until the June 11, 2012, meeting because there is still some paper work needing to be done.

Larry Willis made a motion to continue PP-12-04 to the June 11, 2012, meeting. The motion was seconded by Amanda Mosiman and unanimously carried.

AMENDING ORDINANCES TO THE COMPREHENSIVE ZONING ORDINANCE:

AN ORDINANCE REPLACING EXISTING VERBIAGE OF ARTICLE VI FLOOD HAZARD PROTECTION OF THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA. *Advertised in the Boonville Standard May 3, 2012.*

The purpose of this ordinance is to comply with the new flood hazard maps and ordinance per FEMA.

Mrs. Rector said this has all been sent to them by email. She said this was composed by DNR and they have no choice; this is it. She said they will have new flood plain maps and by August 2, 2012 they have to have all this approved; otherwise, they will not belong to the flood plain insurance program and no one will have flood insurance or be able to get Federal housing loans or disaster relief.

Guy Gentry said it seems pretty cut and dried.

Mrs. Rector said it is what it is and so it has to go to the Commissioners by next month so that FEMA and DNR can approve the ordinance and it be adopted.

Attorney Doll asked if this is done periodically that they review the flood plain.

Mrs. Rector said they have not had new flood plain maps since 1982 but there were a couple of panels updated in 1992. She said now some of the properties that were taken out of the flood plain will now be back in. She said they need to make a motion to recommend approval to the Commissioners.

Attorney Doll said this will be incorporated into the Comprehensive Zoning Ordinance.

Mrs. Rector said she is just taking the old one out and putting the new one in the same place.

Larry Willis made a motion to recommend approval the Flood Plain Ordinance to the County Commissioners. The motion was seconded by Mike Moesner and unanimously carried.

Guy Gentry asked Mrs. Rector if she still needs anything from the participating towns.

Jeff Valiant said he has the one for Elberfeld.

Mrs. Rector said she needs to get in contact with Lynnville and get theirs.

OTHER BUSINESS:

Formal Complaint ~ Frank Schnell dba FIT Tire Recycling, OWNER OF RECORD: J.H. Service Co., Inc., by Ronald Witt, Sr., Pres. ~ Tire storage *Con't from March 12, 2012.*

Frank Schnell and Isaiah Schnell were present.

The President called for a staff report.

Mrs. Rector said the Board is aware of the history of this property so she isn't going to reiterate it. She said they received a copy of the report she got from IDEM and at the time of their inspection, she believes it was in March, they had counted approximately 20,000 tires on the property. She said it was turned over to their violation department and this Board ruled on March 12th to give them until May 11th to have the tires removed. She said Mr. Schnell telephoned the office a week or two ago and said they would not be able to get the tires cleaned up. She said Mr. Schnell's son, Isaiah, who is part owner, has now graduated from IU and told her today he was taking the business over and would like to speak to the Board. She said the Zoning Inspector did go to the property on Friday and took pictures. She said the computer isn't working to show the photos on the screen and so she passed the photos around to the Board. She said his report says basically that nothing has changed. She added that Mr. Schnell told her that he has done work since Friday and he wanted to bring pictures. (Copy on file.)

Isaiah Schnell said, as they know, Steve Groves was supposed to clean these tires up for them because he has them in hoc with the State. He said he is not fulfilling his promise; he had nine of them and another one is supposed to come tomorrow-they have an empty 53 footer coming tomorrow morning to keep

cleaning up. He said they saw that Mr. Groves wasn't getting it done and so they decided they were going to start on it themselves. He said they took out three semi loads of cut up tires themselves within the past week and a half. He said that was since he came back on May 3rd. He said his Mother has also been working hard to help with this clean up and they have been trying to get employees to come in and help. He said they got a couple of men from Petersburg to come down to help him and his Mom this weekend. He said his Dad is really sick and can't do any of the work. He said so the four of them have been working non-stop for the last four days to clean it up. Isaiah Schnell said he realizes they were given sixty days and that it isn't all done but Steve Groves is not doing his job in getting them the machine that would grind up the tires and if they had that machine right now they wouldn't have this problem. He said they drove up to Mr. Groves' establishment back in August and he told him they would have the machine by Halloween. He said Halloween has long gone and they still don't have the machine. Mr. Schnell said Mr. Groves was also supposed to help them get this cleaned up and that he would call Liberty Tire. He said Liberty Tire has been sending down trailers. He said they have done nine and Liberty Tire called them this afternoon and said they would have a fifty-three footer there in the morning to load up some semi or passenger tires. He said they were going to haul this junk away with their Dually and their dump trailer but the Dually went down and for about month and it is still in the shop. He said so they decided to pull the semi they use to haul coal off the route and use it but their truck driver was going around a curve too fast on an off ramp and he wrecked the semi. Mr. Schnell said so then they started scrambling around as to what to do and so they knew some farmers in Jasper that had trucks with wet kits that could be used but since they are farm plates they can't legally haul commercial.

Mr. Schnell said a week ago the dump said they would help them out and they lent them a truck and so what they have been doing is have the dump come down and pick up what they grind down. He said all they have right now working is his Mom, the two workers and him. He said he promises them that if they give him a little more time he will do whatever he has to do to get this cleanup because he wants this business so bad.

Marlin Weisheit asked if they are still receiving tires.

Isaiah Schnell said they are receiving a small minimum of tires in order to pay the bills. He said they are eating bologna sandwiches to be able to survive and pay the electric and water bills and the employees.

Marlin Weisheit asked if there was any word on the shredder.

Mr. Schnell said he keeps saying he is working on it but he personally thinks it is all hog-wash. He said he doesn't know what his deal is; they sent him money and he was supposed to have it done in October. He said this new machine dwarfs their existing machine. He said the one they have now – on a good day- can run 100 tires in there. He said if they had the new machine they could do 700-800 tires an hour. He said that machine is supposed to do semi and small tractor tires too. He said their existing machine is barely big enough to take light truck tires. He said when they met Steve they didn't have this many tires and they were banking on him getting it to them when he said and so he not only hurt them with Warrick County, he caused them to lose a big account and their producer.

Mrs. Rector said she knows it is true they received a grant to purchase this machine. She said she spoke to Mr. Groves and he told her he was supposed to provide them with the shredder. She said her question is if they received this \$130,000-\$150,000 grant and they have already given him the money but haven't received the shredder, don't they think someone needs to be doing something about that legally.

Mr. Schnell said the State is supposed to be helping them monitor; they are supposed to be the police force, however, they are not really doing much right now.

Mrs. Rector clarified the grant was from IDEM for this purpose and they are not helping them get the machine.

Mr. Schnell said they haven't heard from them in a long time. He said they told them to step back, they were IDEM and they will take care of Mr. Groves. He said the problem is they are sitting back and IDEM isn't doing much and now they are in trouble with the County.

Mrs. Rector said she is sure Attorney Doll knows more about these things that she does but it confuses her that they aren't doing anything and then they write them up for a violation.

Attorney Doll said it isn't IDEM's job to do anything about it; they aren't part of the contract.

Frank Schnell said whoever did the report said a lot hadn't been done and that is a cruel understatement. He said he would say there is 45% left to clean up.

Isaiah Schnell said the guy took the pictures from the road because they were there working on Friday and no one came up to the gate and ask to come in.

Mrs. Rector said he will take pictures from the road because he doesn't like to go on people's property.

Guy Gentry asked if they received the full grant amount.

Mr. Schnell said they did.

Guy Gentry if that was that full amount given to Mr. Groves.

Frank Schnell said they spent the first half buying some of the stuff they have in there now which is the smaller grinder and a lot of other stuff. He said the second half they put on the bigger machine. He said about four or five days ago he had a phone call from another individual who wants all the chrome rubber they can provide for them. He said they are supposed to help them out and set up some machines so they can supply them the rubber. He said they service Pike and Warrick Counties and they try to be...but they have had a run of bad luck. He said they just need some more time to clean that mess up.

Larry Willis said the pictures they submitted to them shows an 18 wheeler semi; when he crashed the truck what was he carrying.

Mr. Schnell said he was carrying coal.

Larry Willis said if they bought the truck to hire out to carry rubber tires why was it carrying coal.

Isaiah Schnell said that is for additional income. He said when economy is down people aren't switching tires and if you aren't switching tires they aren't getting the tires and when they aren't getting the tires they aren't making money and so they decided to put the truck to use carrying something else while they are loading the trailers with tires. He explained they have an old truck that can pull the trailers around on the property and then when the trailer is full they would have the semi come in and pull it away.

Guy Gentry asked about the insurance on the truck.

Frank Schnell said if you work with commercial insurance they drag their feet.

The President called for remonstrators.

Attorney Doll asked what is inside the building.

Isaiah Schnell said there are probably 250-450 tires inside to grind on the machine. He said that whole building inside is not full of tires, 50% of it is his father's machinery and saws and bolts.

Frank Schnell said there are other machines in there.

Attorney Doll said he understands that when he got the permission to open this they were not allowed to store tires outside; all the tires had to be stored inside the building. He said that was a condition of the approval of the recycling center at this location. He said if they have other stuff inside the building other than tires...he is looking at the pictures the Zoning Inspector took on May 7th and he hears what they are saying but the pictures look like a carbon copy of the pictures that were taken in January and February and March. He said they are the same configuration and shapes of the piles and location, the grass is green now and it wasn't before, other than that it is the same tires. He said his question is why they have tires stored outside when they never had permission what so ever to store them outside.

Isaiah Schnell said because they got behind.

Attorney Doll asked why they kept accepting tires; he knows the answer but he needs to hear them say it; why did they keep accepting tires when they knew they weren't allowed to store tires outside.

Isaiah Schnell said they have to put food in their mouths.

Attorney Doll said he understands that and so does everybody else but that doesn't give them the right to break the law. He then asked how many tires are at the site today.

Isaiah Schnell said right now there are probably four semi loads each.

Attorney Doll said to tell him what that means.

Isaiah Schnell said that is about 1200 passenger tires and 700 semis.

Attorney Doll said it looks like there are more than 1200 passenger tires. He asked how many tires a semi will carry once they have cut them.

Mr. Schnell said about 1600; anywhere between 1400-1600.

Attorney Doll said so each semi that is leaving according to their estimates; taking say 1500 tires (passenger)...they have taken nine semis out and the tenth one goes tomorrow – it seems to him they are testifying today that they have taken almost 15,000 tires out of there in the last nine or ten days but it looks to him like the piles outside the buildings aren't changing and that is where predominantly all of the tires are stored. He asked why aren't the piles going down compared to prior photographs they have in their records if they have taken 15,000 out.

Jeff Valiant asked if there was some stored behind the building.

Several people discussed the location of the tires at once.

Attorney Doll asked where they are taking tires to dispose of them.

Mr. Schnell said they are taking them to Viola Dump in Blackfoot.

Attorney Doll said so they have to pay to dump the tires and asked what it costs to dump a load, about \$800.

Mr. Schnell said somewhere near that.

Attorney Doll asked who is paying the tipping fees to dump the tires.

Mr. Schnell said they are going to have to.

Attorney Doll asked if they were dumping them on credit.

Mr. Schnell said no they are not dumping on credit; they pay as soon as...

Mrs. Schnell said they have an account with them.

Attorney Doll said so they have to bring in enough tires to pay...if they have taken nine loads and they are \$800 a load and the tenth once goes tomorrow so that is an \$8,000 tipping fee.

Isaiah Schnell said no, the first nine are Steve Groves. He said they personally took three loads for \$800 and so they are at \$2,400 but they weren't full loads.

Attorney Doll said so they are saying the gentleman who breached his contract to provide them with a shredder is paying the tipping fees on the nine loads that have went to Blackfoot Landfill.

Isaiah Schnell said those tires are going to Liberty Tire. He said Liberty Tire is in North Liberty, Indiana.

Attorney Doll said so nine loads went to North Liberty, Indiana recycling center. He asked what they do with the tires.

Isaiah Schnell said they further process them.

Attorney Doll said the loads they personally dispose of are going to the landfill in Blackfoot where they have to pay approximately \$800 a load. He asked how many more loads do they have committed that Steve Groves is going to take care of for them.

Isaiah Schnell said Steve was initially going to take care of all of it for them.

Attorney Doll said he understands that but Steve has not done a lot of stuff he said he was going to do. He said his question is, they have one more trailer that committed to come tomorrow – that is a Steve trailer and it is going to Liberty – do they have any commitments from anybody to help them dispose of these tires after that one trailer tomorrow.

Frank Schnell said no but see a lot of them have rims and they have to get them de-rimmed and a lot of the tires there still have rims and there are probably about \$8,000-\$10,000 of rims.

Attorney Doll said so he is saying he can sell the metal and they would have disposal fees to then dump the cut tires at Blackfoot.

Frank Schnell said also the semi that was totaled out had quite a bit paid down on it and they are going to have about \$2,000-\$3,000 left off it after they clear the loans on it to be able to pay tip fees too.

Attorney Doll said well they are currently under violation of IDEM and asked if they have given them a cease and desist order.

Mr. Schnell said they haven't.

Attorney Doll asked what they do have from them.

Mr. Schnell said just an inspection report.

Mrs. Rector said it has been turned over to the violation...

Attorney Doll said they haven't started an administrative hearing but then said they were cited because new violations were observed on March 21st and previous violations remained out of compliance according to Megan Nagle.

Mr. Schnell said he didn't know if they had any of the past ones but they have not been out of anything when they were in Pike County – until they moved down here and this Steve Groves absolutely put the screws to them. He said if they would pull every report on them since they have been in business for seven years ...they have been in more trouble since they moved to Warrick County and they never had any infractions until they came down here and tried to get bigger and until Steve Groves didn't come through.

Attorney Doll said he just wants to make sure he doesn't think Warrick County caused his problem.

Mr. Schnell said he did not say that; Steve Groves caused the problem because they tried to grow bigger. He said they never had any infractions until they came down here.

Attorney Doll said according to IDEM, on March 21st they had 18,071 tires, 334 of which were still mounted on rims and the rest were not mounted on rims. He asked if he agrees that is how many tires were there.

Isaiah Schnell asked if there is anything about semi tires in the report.

Mrs. Rector said it also states they were not able to get into the building and so they were approximating there were thousands more.

Frank Schnell said they had access to the building.

Mrs. Rector said (the letter says) she couldn't count them. She said she is only telling them what the letter says.

Attorney Doll said it also says the prior inspection had revealed 3,000 passenger tires and 1,075 semi tires were taken off site and sent to Liberty Tire for processing and manifests for the 4,075 tires removed were not on site at the time of the inspection. He said according to the annual tire summary, in 2011 they received in 35,000 passenger tire equivalents. He said so according Waste Transporter Reports, State Official Form 35898, and Tire Annual Summary Form, State Official Form 52716 filed on January 6th that this location received, for the calendar year of 2011, 35,000 passenger tire equivalents. He said the permit for approval from Warrick County at this facility was 2,000 tires.

Frank Schnell said at that time frame they were moving them out too.

Attorney Doll said he understands but it looks like they didn't get them all moved so his dilemma is they are asking for some more time and this Board has a history of being very considerate of that point but this seems to be a problem that is not getting better. He said it seems to be a problem frankly, that started out almost at the get go violating the permission that Warrick County gave them to operate that recycling center with. He said it seems to be a problem that they are bringign ... he understands the dilemma here, if they don't take new tires in they are dead financially because they can't sell the cut tires; they have to pay to dump them.

Frank Schnell said right now they do but he has a guy that is supposed to be coming but...

Attorney Doll said with all due respect, he has heard that story for years. He said the problem is that they get paid so much for every tire they accept in and if they stop taking in new tires, not only do they not eat and not pay their bills; they can't pay Blackfoot to dump tires in the landfill once Liberty quits taking the tires.

Frank Schnell said he has raised the price of his tipping fees but it doesn't hit the books all of a sudden.

Attorney Doll said so if this Board gave them a cease and desist letter that said they can't take in new tires they are dead.

Mr. Schnell said yes.

Guy Gentry asked how many tires he is receiving, he said they were taking in minimal amounts but they have to keep records.

Frank Schnell said it varies from week to week and to put a figure on it anything he would tell them would be a lie because he can't just put an exact figure down.

Mrs. Rector said approximately how many tires.

Guy Gentry asked if they are receiving more than they are sending out.

Mr. Schnell said no and that place is so much cleaner than when the inspector came out there. He said he doesn't want to call someone...he knows what they have done and how many tires have gone out of there.

Guy Gentry asked for the wishes of the Board.

Marlin Weisheit said he has one question; when do they think they can come into compliance at the rate they are going.

Frank Schnell said two months from now.

Marlin Weisheit said he thinks they will be in compliance and down to 2,000 tires...

Frank Schnell said if they give them another two months and they are not in compliance they can shut them down. He said two more months is what he is asking for. He said they are not a bunch of liars and they are not a bunch of cheats.

Marlin Weisheit said he knows they have run into problems and he understands that.

Mrs. Rector said one of the big things on the complaint was the mosquitos and the tires holding the water. She said she doesn't know if they could do something about that in the meantime if the Board gives them additional time.

Frank Schnell said a lot of what is there are on rims and they are not holding moisture. He said behind the building is a sewage ditch and when he first looked at the property the mosquitos ate him alive. He said there is sewage coming out somewhere there.

Mrs. Rector said she understands that but...

Amanda Mosiman said the mosquitos have to have stagnant water to breed; any running water they won't breed in.

Mrs. Rector said even the IDEM report states there is water sitting in tires.

Larry Willis asked if Isaiah has graduated or is just back for the summer.

Isaiah Schnell said he is back for good. He said he has an internship he has to do; he has technically graduated from IU but they told him he had to do this internship this summer but he told them what was happening here at home and so they gave him an extension and he can do his internship next summer so he is home for a year.

Marlin Weisheit asked if he agrees they can be in compliance in two months.

Isaiah Schnell said they can; he will do what he has to do to get this taken care of. He said he was loading a semi at 4 am this morning.

Marlin Weisheit said he can tell he is serious but it is important to the Board.

Isaiah Schnell said if they give him sixty days he will do it himself if he has to.

Marlin Weisheit said he doesn't think anyone here wants to see him fail and he thinks this is a good recycling business that they need here in the County and they want to see them succeed in Warrick County but it just can't keep going like it is.

Isaiah Schnell said he understands but they have to understand he was up at IU and his dad told him last night to his face that it was his mistake going to IU and that hurt but he is here now and he is telling them that he will do what he has to do to get them into compliance in sixty days.

Guy Gentry asked Mrs. Mosiman if there is anything she is aware of that can help with the mosquito problem.

Amanda Mosiman said they can find some control options for the mosquitos and if that is where the complaint lies they can help with that. She told them she is the Ag and Natural Resource Education for Purdue Extension and they can help them with that.

Isaiah Schnell said they have spray and they were also told if they put rock salt into the water it would kill the mosquito larvae.

Mrs. Mosiman said she would have to check the concentrations and would have to research that. She said she could have the answer by tomorrow.

Isaiah Schnell said if they start knocking these tires down then they won't have a problem. He said if they give him sixty days he promises he will get it done.

Mike Moesner made a motion to grant them a sixty day extension.

Larry Willis asked if they wanted a progress report in thirty days or just give them sixty days without a progress report.

Frank Schnell said what he really wants is for the inspector to come up and walk through his property tomorrow.

Marlin Weisheit said and then in thirty days give another...

Frank Schnell said he didn't care, do seven days.

Jeff Valiant said he lives just a half mile down the road and he wouldn't mind stopping by there. He said he passes it twice a day going to work and he sees the front and to be honest, he agrees with Attorney Doll, it looks the same up front as it has for the last six months. He said now around back he can't see.

Frank Schnell said all he asks is he gives them a time to make sure someone is there.

Jeff Valiant said his biggest concern for the Town of Elberfeld is not the mosquito problem but if God forbid, a fire would start there, they are talking about...

Frank Schnell said one of the reasons they have the piles like they do is for fire patrol because you can get in between them. He said that is why it looks bad because they are strung here and there; partially for fire patrol.

Mrs. Rector asked if Mr. Valiant has a way of taking pictures to send to the office.

Mr. Valiant said he was just going to check it out around back because it is hard to tell from the road.

Mrs. Rector said they do have an inspector but he has had a few health issues lately...

Jeff Valiant said he has no problem stopping by and checking it out.

Larry Willis asked if there is still a motion on the floor.

Mike Moesner restated his motion to grant them sixty days and have a report from the inspector or someone after thirty days. The motion was seconded by Marlin Weisheit and unanimously carried.

Formal Complaint ~ Michael & Carlotta DeClue ~ 270 W. Walnut St., Elberfeld, IN ~ Determination on violations

Michael DeClue was present. He handed the Board some copies of letters of support and photographs. (Copies on file.)

The President called for a staff report.

Mrs. Rector said a complaint was filed March 28, 2012 by the Town of Elberfeld saying *Resident was given truck parking permit according to the current town ordinance. However, resident has since abused this privilege, running what appears to be a business out of the residence, causing great concern among neighbors and townspeople due to the number of trucks being parked, general disregard for fellow residents, his continually blocking of roadways and his inability to navigate turns without intruding into someone's yard. Resident also has an 1100 gallon fuel tank located on property (recently leaked), has been noted working on trucks late into the night, and used truck parts lying about property. Included with this complaint are copies of letters from residents and pictures.* She added there were three letters attached to the complaint and copies are in your packets. She said the Zoning Inspector went to the property April 5, 2012 and took photographs and reported *I saw a few tires on site and an old dump truck. The rest of the property looks great.* She said a letter was sent to Mr. & Mrs. DeClue on April 12, 2012 informing them of the complaint and that this matter would be placed on this agenda. She said Mr. DeClue came into the office after receiving his letter and obtained copies of the complaint. Mrs. Rector said last week an Elberfeld Town Board member called the office and said Mr. DeClue was removing the items from his property in Elberfeld but was moving it to different property on Elberfeld Road. She said the Zoning Inspector went to the property on May 10th and reports *There has been a lot of cleanup at this site. I have been told that they are moving to another address at 11088 Elberfeld Rd.* She said he went to the Elberfeld Road property and took photos and reports *I found this address to be in the process of being*

cleaned up. This used to be a business and some of the materials are still there; however, that property is zoned “A” Agriculture and would need to be rezoned for them to locate the business there. She said she has pictures she can pass around since the computer isn’t working.

Brad Overton arrived at the meeting at 7:00 p.m. The Board passed around photos for review.

Mike DeClue said that one set of pictures was taken at one time and it is the same picture from different views and this is not the situation that it is now. He said these two semis do belong to him and one of them he was working on at his house the day the pictures were taken. He said the other truck showed up that day because it had a bad part on it. He said it got late and he didn’t take the trucks out to SR 68 and SR 57 where he normally parks them. Mr. DeClue said he let them set there for the night and the pictures had to have been taken the next morning because after that both of the trucks were gone. He said they are not at his house all of the time; he has two drivers, one lives in Princeton and the other lives almost in Petersburg and they take the trucks home with them almost every night. He said they don’t even fuel up at his house; the fuel tank is there from when he was allowed to park his truck there that he drove himself. He said it is cheaper for him to buy the fuel and it is an 1100 gallon tank but there has never been a leak in that tank. He said the EPA was called because a nozzle came out; the nozzle snapped and came out of the tank and fell on the ground and about five gallons of fuel came out. He said he didn’t have any oil sorb that he could get his hands on and so the first thing he did was grab the water hose to dilute it down so it wasn’t at least full strength. Mr. DeClue said one of his neighbors called and had the EPA come down and talk to him. He said he asked what he should have done and he was told it wasn’t the best choice he made but it was better than nothing. He said EPA inspected his tank and said it was fine and it wasn’t against the law for it to set there because it wasn’t next to a creek or drain and it didn’t need a motor on it because it wasn’t above 1350 gallons. He said he asked the EPA if there was anything he wasn’t complying with and the only thing he recommended was he have a barrel of oil sorb or kitty litter next to the tank so if it happens again he could stop it from flowing.

Guy Gentry asked if the tank is still there.

Mr. DeClue said it is.

Guy Gentry asked if the trucks come there to fuel then.

Mr. DeClue said no, the only time they fuel there is if he has one at the house to change a brake or a tire or something else and then he will fuel it up before it goes on. He said it is cheaper if he has it at the house because he can buy it in bulk.

Guy Gentry asked how he fuels the trucks, does he have a transfer...

Mr. DeClue said his trucks fuel at Goady Oil which is at the intersection of SR 68 and SR 41. He said they don’t come every day to his house and fuel. He said they don’t come to his house at all unless there is something wrong with them; a flat tire, a brake needs adjusted, things like that.

Guy Gentry said he still utilized the tank though and he keeps it full of fuel.

Mr. DeClue said it is not always full; most times it has about 700 gallons in it. He said it stays about half full because he doesn't need it as much as he did before.

Guy Gentry said there was also some talk about moving to another property or something.

Mr. DeClue said no sir; he doesn't know where that came from and the address is not even right.

Todd DeClue said they moved an old dump truck to his house so they could scrap it and more than likely the photo with the trailer with the scrap on it was in his driveway with the dump truck because they are hauling the scrap off. He said the next thing they are going to do is scrap that old dump truck and so they hauled it to his house so no one would in the town would complain about them scrapping it there. He said since they had already complained about his dad they figured they would take it to his house since it is out of town. He said in a couple of weeks it will be gone. He said they have a complete load of scrap that they will take off tomorrow and this weekend they can start scrapping.

Jeff Valiant asked if that is the place on Elberfeld Road they were talking about. He said this is the first he heard about that.

Todd DeClue said the address is wrong but all they did was haul it down there so they could scrap it.

Mike DeClue said it was right there; there were some drums and some tires and it did look bad and he totally agreed with that and he let it go too long but it doesn't look that way now.

Todd DeClue said anything that they see in his yard is the stuff they are scrapping right now and that will be gone in a week or two.

Mrs. Rector said so he knows, in the ordinance and that is the ordinance that he goes by, not the Town of Elberfeld giving him a parking permission in the town. She said you cannot exceed a ton and a half vehicle in a residential area for any vehicle. She said anything over that is in violation of the zoning ordinance.

Mike DeClue said wouldn't the Town Board of Elberfeld know that before they issued him the parking permit.

Mrs. Rector said she isn't going to get into that but they know now.

Mike DeClue said this was four years ago.

Mrs. Rector said she is telling him now what the ordinance is.

Mr. DeClue said that puts him in a conundrum; he doesn't know what to do here because on one hand he is given permission four years ago to park as long as he met three qualifications in the Town ordinance (that they gave him) and now he finds out he is violation of the County ordinance that he knew nothing about until he talked to her about it. He said he is caught in the middle.

Mrs. Rector said the Town of Elberfeld has given this Board the authority to enforce all zoning regulations in their town and so therefore, if they want to adopt their own Plan Commission they can do so but until then he has to go by these ordinances. She said her office runs all subdivision and zoning ordinances of the County and also of the towns of Elberfeld, Lynnville and Tennyson.

Attorney Doll said County ordinance would control and he has to conform to it and in that zoning category he can't have more than a 1.5 ton vehicle.

Mrs. Rector said he can't work on vehicles there unless it is a commercial business.

Mike DeClue said this is not a business address; his business address is not 270 W. Walnut Street.

Attorney Doll said it is a post office box.

Mike DeClue said that is correct because he does no business there at his house. He said his business is done over the phone; people call him and tell him what they need and where to take it and then he calls his two drivers and they go get it. He said that is it, there is no business there.

Mrs. Rector said at the least he is running a home business because he has an office in his home.

Mr. DeClue said no.

Mrs. Rector said so when he gets these calls and he sends the trucks out he isn't doing business and making a living.

Mr. DeClue said he doesn't have a business in his home.

Mrs. Rector asked where his office was.

Mr. DeClue said it was in his phone.

Mrs. Rector asked where he did his paperwork.

Mr. DeClue said it is done wherever he wants to do it. He asked what difference the paperwork made. He said this whole situation could have been completely avoided and Mr. Valiant knows exactly what he is talking about. He said he has explained to the people on the Town Board about property lines for seven or eight months and no one would listen to him. He said the very first thing when this came up was

someone said that he was running on their property. He said it has been four years that he has had this parking permit here but no one says anything until now; why is that.

Guy Gentry said he didn't know but he does know what the ordinances are and it is that he can't have a vehicle more than 1.5 tons on his property.

Mr. DeClue asked what classifies 1.5 tons.

Attorney Doll said it is a way to measure and he knows exactly what it is.

Mr. DeClue said so it is the weight of the vehicle so they are talking 3,000 pounds.

Mrs. Rector said she thinks he knows what it is.

Mr. DeClue said he is asking because they didn't know about this.

Mrs. Rector asked what type of business he has with these trucks and where does he run it.

Mr. DeClue said he just explained that; he hauls coal. He said people call him.

Larry Willis asked if the IRS wanted to get hold of him where would they send a request.

Mr. DeClue said his mailing address for anything from the IRS is his taxman. He again said he doesn't run a business out of his house and he has been accused of this umpteen times by the Town Board.

Attorney Doll said it seems to him that maybe what they want to talk about is whether he wants to file for a rezoning, a home workshop or a home occupation but one of those three things is the only way he will be technically in compliance with the ordinance. He said but unless he rezones this site – and that is difficult to do – he still won't be allowed to have semis come to that residentially zoned property.

Mr. DeClue said they have had a man in his community for over twenty years and parked his truck on the same street that he lives on.

Attorney Doll said and if they get a complaint about him and his property is also zoned residential that complaint would be treated just like this one. He said that is the rule and the ordinance and it has been around a long time. He said this isn't something new; it may be new to him...

Mr. DeClue said apparently it isn't known by the Town Board of Elberfeld either because they didn't say anything at all about this.

Attorney Doll said he doesn't represent the Town of Elberfeld but he does represent this Board and he does so in court and he enforces this ordinance so if he would like they could ask one of the Warrick County Judges to see if he wants to interpret the ordinance differently; maybe he will, but probably he

won't. He said they would be happy to work with him to solve this problem if he wants to rezone or apply for a home occupation or a home workshop that might qualify him to operate his business there, but short of rezoning it he can't have commercial trucks in a residential zoned property.

Mr. DeClue said he wants to know exactly what their definition of 1.5 ton vehicle is because if they are going down the route of it is the weight it can carry or if it is the total weight or the weight when it pulls something...there are various differences here. He said he knows what a 1.5 ton truck is.

Attorney Doll asked if his contention is his semi is a 1.5 ton truck.

Mr. DeClue said that is not what he is asking.

Attorney Doll said then it is irrelevant to the hearing.

Mr. DeClue said it isn't because there will be about thirty violations in front of this Board because of this.

Attorney Doll said right now they have one and it is his.

Mr. DeClue said what he is asking for is a definition of what a 1.5 ton is supposed to be so he can comply with their laws.

Attorney Doll asked again if the semi qualifies as a 1.5 ton truck.

Mr. DeClue said he knows it does. He said he still wants to know what a ton and a half is to this Board.

Guy Gentry said he would have to ask a car dealer what their numbers were; 4500 or 5500...

Mr. DeClue said his point is they are saying a 1.5 ton and most pickup trucks and cars weigh over 1.5 tons.

Guy Gentry said and they are half ton pickups and are rated as that not a 1.5 ton and they are not talking about the weight of the vehicle.

Mr. DeClue said that also includes busses.

Guy Gentry said busses are not addressed in the ordinance. He then asked Mr. DeClue if he understands what they need. He said they need to either file a rezoning; home occupation or home workshop application.

Mrs. Rector said they can't qualify for a home workshop. She said the home office would only allow him to have an office in his home but not have commercial vehicles there.

Attorney Doll said he could do his telephone and paperwork there as a home occupation.

Mrs. Rector said that is why she asked those questions and was trying to help him with that part.

Mr. DeClue asked what that entailed.

Mrs. Rector said it is an application that is heard by the Board of Zoning Appeals. She said they would send out notices to the adjacent property owners and they can't put up any signs and it doesn't change the appearance of the home. She said this is just to have the office inside the house and there are no employees there and no retail sales. She said staff can help them with the application and usually there are no objections to that but that won't take care of the trucks but it will allow him to have an office in his home legally. She said trying to rezone in the town can run into problems in a residential area and he needs to find someplace for his trucks.

Mr. DeClue said that was the whole point of going to the Town Board to get his permit to begin with because that is what their ordinance said he had to do and he followed every one of their rules and now....

Jeff Valiant said for the record that was the previous Board, not the Board he is on now and he knows the permit is up in the air right now because it lapsed and they are looking into changes and then this came up and it was decided to see what happened here and then they would go forward. He said it seems like they have given him the answer tonight but he wants it clear that he wasn't on the Board that gave him the permit before.

Mr. DeClue said the permit is good; it has been paid and he has a receipt.

Jeff Valiant said then someone did something wrong because that is not...

Mrs. Rector said that is between him and the Town Board.

Mr. DeClue said that will be done. He then said it didn't take him ten days to put all this stuff together and get his trucks there and all that and does this mean he has two days to get rid of everything.

Mrs. Rector said that is what he is going to ask this Board. She said the next filing deadline for the home occupation for the Board of Zoning Appeals is May 29th. She said that meeting would be held June 25th and so this Board would know by their July 9th meeting if the home occupation was approved.

Attorney Doll said so they need a motion to continue this to the July 9, 2012 meeting to give them enough time to know if he has applied for the home occupation and whether or not it was approved and whether the issue concerning whether the trucks being parked there has been resolved.

Guy Gentry said they need to file the application for the home occupation before May 29th and that gets the ball rolling to get them into compliance for the office, but not the trucks.

Mr. DeClue said one other questions he has is the three people who filed the complaint against him plus Steve Gibson on the Town Board; are they going to come back and keep on him and his son about using this to take care of his trucks until they get this done.

Mrs. Rector asked if he means in the meantime. She said some of the complainants may be present this evening. She said they would call the office and she would tell them whatever the Board rules tonight.

Jeff Valiant said if anyone says anything to him he should have them get hold of him; he has no problem helping them out with this.

Mr. DeClue said he isn't trying to go against any rules; they thought they were obeying the rules.

Guy Gentry said as a general rule the trucks aren't going to be at his house anyway according to what he said.

Mr. DeClue said they are only there whenever he has to do something to them.

Mrs. Rector said maybe he could find a piece of commercial property in town.

Mr. DeClue said he has been looking for a piece of commercial property to build a building but Elberfeld sold all of their stuff to a farmer so he can't buy any of that and it isn't easy to find property.

Amanda Mosiman said as far as the people who are making the complaints, as Mrs. Rector stated, they are going to help him through this process and he is coming into compliance and they can't make additional complaints unless there is a different violation. She said the only violation they see right now is the trucks and they are working on that.

Mr. DeClue asked if the fellow came back and took pictures.

Amanda Mosiman said the pictures of the property are fine. She then made a motion to table this matter until the July 9, 2012, meeting. The motion was seconded by Mike Moesner and unanimously carried.

Formal Complaint ~ Aleah Pendergraff ~ 7311 Fairview Dr, Newburgh, IN ~ Determination on violations

Aleah Pendergraff Gibson was present.

The President called for a staff report.

Mrs. Rector said a complaint was filed February 17, 2012 stating *The owners of the residence have considerable trash and motor vehicles in the yard have made their property an eyesore to the neighborhood and have lowered neighboring property values, as a result of their negligence to clean their property. The owner is also running a business out the home that is in a zoned residential area.* She said the Zoning Inspector went to the property on February 29, 2012 and took photos and reports *There is*

*trash on the side of the house, also a boat and miscellaneous items. I could not tell if they had a lawn mower business. I did see a trailer parked in the street with a trimmer and a gas can. She said a letter was sent on March 30th informing them of the complaint and explaining they should contact the office regarding the commercial business and a time period needed to clean up the debris in the yard. She said Mrs. Gibson came into the office and I explained to her that she could file for a Special Use for a home occupation for her husband to operate his lawn care business office from the home. She said I told her that it would have to be filed in this office before this meeting and I also explained that if the property was cleaned up when the Zoning Inspector went to the property on May 11th, they would not need to be present this evening. She said the Zoning Inspector went to the property on May 11th and took photos and reports *I have made a site visit to this site and it has been cleaned up. There is still a boat on the side of the house.* She said the photos also show a truck with a trailer hooked to the back beside the house and the trailer has what looks like dead vegetation in it. She said Mr. Gibson telephoned the office right after the Inspector left the property and I explained to him about the Special Use for a home office. She said he first said he had rented a place at Willis Storage for his equipment and then later said he was moving to Vanderburgh County and I told him he needed to come to the meeting this evening to discuss his options with the Board.*

Mrs. Gibson said they have a lease agreement for property in Vanderburgh County and the lease begins June 1st. She said they will also have an office there. She said they have two trailers but one of them is not necessarily a business trailer, it is for personal use but the business trailer that has the generator and lawn care equipment will kept at the Vanderburgh County address on June 1st.

Amanda Mosiman clarified the whole business is moving and they won't need a home office.

Attorney Doll said this looks like a good lease and the pictures look like the property is clean.

Ascertaining there were no other comments from the Board, the President called for remonstrators.

Michael Brown said the property looks 100% better and the only issue he has is the boat sitting on the side of the house. He said even the personal use trailer – he doesn't like them out in the street because it is a safety hazard because they block the view.

Mrs. Gibson said the trailer will be kept in her driveway and the boat will be moved and mowed around.

Marlin Weisheit made a motion the property was no longer in violation. The motion was seconded by Mike Moesner and unanimously carried.

Formal Complaint ~ Kenneth & Ruby Grigsby ~ 8866 Oak Grove Rd., Newburgh, IN ~ Determination on violations

No one was present.

The President called for a staff report.

Mrs. Rector said the Board knows where this property is on Oak Grove Road. She said this property was rezoned back in the 1970's for a junk salvage yard. She said according to the ordinance a junk salvage yard must be completely enclosed within a fence. She said a complaint was filed April 10, 2011 saying *our rental house at 8848 Oak Grove is in front of 8866 Oak Grove junk yard. There is boxes of plastic and trash-lawn mowers-vehicles that don't run. It is a health hazard-mosquitos-coons, possums- rats they are tearing up our bird feeders-killing baby birds. We have not been able to rent our house due to the trash/junk etc. it is a fire hazard. We have asked him to clean this up. He just makes smart remarks. We are tired of looking at this trash.* She said the complainant brought in additional signatures on a sheet but no statements were on the sheet. She said a letter was sent to the Grigsby's on April 23, 2012 informing them of the complaint and further informing them their property is zoned "M-2" General Industrial and the junk yard should be completely enclosed within a 8 foot high fence. She added the complaint was also forwarded to the Health Department regarding the mosquito and animal complaint and Aaron Franz informed her that IDEM went there and said there was really nothing they were in violation of and there was nothing the Health Department could do since they are zoned for a salvage yard. Mrs. Rector said Mrs. Grigsby telephoned the office and spoke to Sheila saying she was going on vacation and wanted to continue this matter until the June 11th meeting and she would send a letter requesting that. She also said Mrs. Grigsby said they were cleaning up the property. She said there is no letter asking for a continuance was ever sent, however Mr. Grigsby did send an email on April 30th giving a list for fixing the property and a list of things he has done over the last few months. She said his list for fixing the property are 1. Remove all liquid for containers outside 2. Get tire removed from outside property 3. Remove non running cars from property 4. Remove plastic from outside property 5. Finish removing storm downed trees 6. Remove trash 7. Mow weeds. She said his list of things done in the last few months are 1. Hauled off 30,000 lbs scrap steel to scrap yard 2. Hauled off 2 non running cars 3. Repositioned flatbed truck so neighbors to the east can use my driveway 4. Flatbed to be hauled off shortly 5. Started removing dead tree from in front of shop building. She said the Zoning Inspector went to the property on May 7th and took photos. She said his report states *I have made a site visit to this site and found trash, weeds, junk cars around this site. This used to be an old factory site and it looks like some of this stuff left over is still on site.* She said he went back to the property May 10th and took photos and reports *I have made a site visit to this address and found it to be the same as the last visit.*

Brad Overton made a motion to have staff send a letter to the owners giving them sixty days to come into compliance by having an 8' fence constructed around their property or have a purchase agreement for a fence to be constructed or cease being a junk yard. The motion was seconded by Marlin Weisheit. Larry Willis abstained from voting and all other members voted for the motion.

Discussion of Personnel Matters

The President stated they held their Executive Session earlier this evening and called for a motion on that discussion.

Marlin Weisheit made a motion for the Executive Director to send a letter of termination to the employee who has been on unpaid leave due to Warrick County being an at will employer. The motion was seconded by Mike Moesner and unanimously carried.

ATTORNEY BUSINESS

Attorney Doll said the Rainey complaint has been filed and is set for hearing June 22nd at 2:00 p.m.

Attorney Doll said he also inherited a case on Yankeetown Road when he first became their attorney. He said the Court did issue a cease and desist order and the County cleaned up the property. He said is going to file a second contempt citation against them and see if Judge Meyer will agree with him that the cease and desist order was the same as an injunction to keep the property clean.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no other business the meeting adjourned at 7:45 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director